

California Environmental Protection Agency

 **Air Resources Board**

Addendum to the Final Statement of Reasons for Rulemaking

**ADOPTION OF THE AIRBORNE TOXIC CONTROL MEASURE FOR CRUISE SHIP
ONBOARD INCINERATION**

Public Hearing Date: November 17, 2005

Agenda Item No.: 05-11-2

Addendum Prepared: April 17, 2005

I. BACKGROUND

On March 8, 2006, ARB staff submitted the Final Statement of Reasons (FSOR) and a Final Regulation Order adopting section 93119, title 17, California Code of Regulations (CCR) to the OAL for review and approval.

This Addendum to the FSOR for the Adoption of the Airborne Toxic Control Measure for Cruise Ship Onboard Incineration lists, describes, and provides reasoning for the nonsubstantial changes that the Air Resources Board (ARB or the Board) made to the FSOR and Final Regulation Order. The changes made do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provisions. All of these changes were made in response to concerns raised by the Office of Administrative Law (OAL). ARB is submitting this addendum to the FSOR for insertion in the OAL File Number 06-0308-02S.

OAL comments that because the Airborne Toxic Control Measure for Cruise Ship Onboard Incineration (ATCM) differs from the United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), a separate finding that the cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

Subsequent to ARB publishing its Staff Report for the ATCM, the National Oceanic and Atmospheric Administration Nautical (NOAA), updated three of the nautical charts which were listed in the FSOR and incorporated by reference in the ATCM. The three updated charts were listed as Chart 18640, San Francisco to Point Arena (July 2000); Chart 18680, Point Sur to San Francisco (March 2001); and Chart 18740, San Diego to

Santa Rosa Island (August 2003). These three charts were updated by NOAA on August 2005, June 2005, and April 2005, respectively. All changes to the charts are nonsubstantial.

II. ADDITIONAL MODIFICATIONS

A. Differences Between State and Federal Regulations. Added the following section I.G. to page 3 of the FSOR.

“G. Differences Between State and Federal Regulations

In accordance with Government Code section 11346.2(b)(5)(B), the Executive Officer has determined that the cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

1. *U.S. Coast Guard Regulations*. MARPOL 73/78 is implemented in the United States by the Act to Prevent Pollution from Ships (33 U.S.C. section 1901 *et seq.*). The U.S. Coast Guard is responsible for prescribing and enforcing regulations pursuant to MARPOL 73/78 in U.S. waters. The U.S. Coast Guard regulations implementing MARPOL 73/78 and the Act to Prevent Pollution from Ships are found at title 33, Code of Federal Regulations (CFR), section 151. In particular, subsection 151.55 requires the master or person in charge of the ship to maintain written records of the date and time of incineration (if incineration was conducted at a port), the name of the port, the latitude and longitude of the location where incineration was conducted and the estimated distance of that location from shore, and the amount of garbage incinerated. The records must be prepared at the time of incineration, certified by the master or the person in charge of the ship, maintained on the ship for two years, and made available for inspection by the U.S. Coast Guard.

The ATCM expressly requires owners or operators of cruise ships subject to the requirements of the ATCM maintain records for each segment of a voyage if, during any portion of that segment, the cruise ship travels within 3 nautical miles of the California coast. While the U.S. Coast Guard regulations only require the records to be made available for inspection by the U.S. Coast Guard, the ATCM requires that the records be made available to ARB personnel, District personnel, or their delegates. Access to these records by ARB personnel, District personnel, or their delegates is necessary to adequately enforce the ATCM, to reduce emissions of TACs, such as dioxins, furans, and toxic metals along the coast, and to reduce the potential for adverse health impacts to residents and offsite workers who live or work near ports and along the coast.

The records required by the ATCM are substantially similar to the records required by the U.S. Coast Guard regulations, with one exception. U.S. Coast Guard regulations require the signature of the officer in charge of the operation. However, the ATCM allows either the name or signature of the officer in charge of the operation. This difference, allowing the name or the signature, was incorporated into the ATCM at the request of the cruise ship industry. During workgroup discussions, the industry

commented that allowing the name rather than the signature in the records facilitated electronic recordkeeping.

2. *APHIS Regulations.* APHIS regulations require regulated garbage within the territorial waters or the territory of the U.S. to be destroyed by incineration to an ash or sterilization by cooking to an internal temperature of 212 degrees Fahrenheit for 30 minutes in order to prevent the introduction of foreign animal and plant disease and pests. Regulated garbage may also be ground and disposed of in an APHIS approved sewer system. Garbage on vessels that have not been outside the U.S. for the previous two years or have gone through an APHIS sanctioned “purging” process is not regulated. “Regulated garbage” is defined as garbage derived in whole or in part from fruits, vegetables, meats, or other plants or animal material, and other refuse associated with the material onboard including food scraps, table refuse, galley refuse, food wrappers or packing materials and other waste material from stores, food preparation areas, passenger or crews quarters, dining rooms and other areas. Most of the regulated garbage onboard cruise ships is subject to APHIS regulations.

While the APHIS regulations allow incineration of regulated garbage within the territorial waters (12 nautical miles of the coast), the ATCM expressly prohibits incineration within 3 nautical miles of the California coast. APHIS regulations do, however, provide alternative means of managing regulated garbage while the cruise ship is within 3 nautical miles of the California coast, i.e., sterilization or disposal in an APHIS approved sewer system. Cruise ship operators can also keep international regulated garbage in leakproof, covered containers during the time they are traveling within three nautical miles or while at port.

By prohibiting incineration within 3 nautical miles of the California coast, the potential for adverse health impacts will be reduced for residents and offsite workers who live or work near ports and along the coast. The ATCM is expected to reduce emissions from toxic air contaminants (TACs), such as polychlorinated dibenzodioxins (PCDDs or dioxins), polychlorinated dibenzofurans (PCDFs or furans), and toxic metals. Moreover, the benefit to human health, public safety, public welfare, and the environment as a result of the ATCM is anticipated to increase dramatically as the cruise ship industry in California is a fast growing industry.

Finally, Assembly Bill 471 (AB 471) that was passed by the California Legislature and signed by the Governor in 2004 already prohibits cruise ships from conducting onboard incineration while operating within 3 miles of the California coast. The ATCM implements AB 471 and ensures that this law is adequately enforced.”

B. National Oceanic and Atmospheric Administration Nautical (NOAA) Chart Dates. Revised the dates of the NOAA charts to reflect the current charts. NOAA periodically updates its nautical charts to reflect changes in the nature and form of the coast, the general configuration of the sea bottom including water depths, locations of dangers to navigation, locations and characteristics of man-made aids to navigation and other features useful to the mariner. Subsequent to ARB issuing its Staff Report, NOAA

updated three nautical charts, which were incorporated by reference in the ATCM and listed in the Staff Report. However, the ATCM and Staff Report identified the dates of the charts prior to the updates. NOAA's updates to the three nautical charts included adding, deleting, or relocating buoys, stations, submarine cables, shipping lanes, prohibited areas, and research areas. For purposes of this ATCM, the updates are nonsubstantial in nature since they did not change the 3 nautical mile line depicted on the charts.

Page 2, paragraph I.C of the FSOR is changed to: "The ATCM adopts the following NOAA Nautical Charts: Chart Number 18600 - *Trinidad Head to Cape Blanco* [January 2002], Chart Number 18620 - *Point Arena to Trinidad Head* [June 2002]), Chart Number 18640 - *San Francisco to Point Arena* [August 2005], Chart Number 18680 - *Point Sur to San Francisco* [June 2005], Chart Number 18700 - *Point Conception to Point Sur* [July 2003], Chart Number 18720 - *Point Dume to Purisima Point* [January 2005], and Chart Number 18740 - *San Diego to Santa Rosa Island* [April 2005]), which are incorporated by reference in title 17, CCR section 93119(d)(10)."

Section 93119(d)(10) is changed to: "'Within three miles of the California coast' means between the California coast and the Three Nautical Mile Line as shown on the following National Oceanic and Atmospheric Administration (NOAA) Nautical Charts as authored by the NOAA Office of Coast Survey, which are incorporated herein by reference:

- (A) Chart 18600, Trinidad Head to Cape Blanco (January 2002);
- (B) Chart 18620, Point Arena to Trinidad Head (June 2002);
- (C) Chart 18640, San Francisco to Point Arena (August 2005);
- (D) Chart 18680, Point Sur to San Francisco (June 2005);
- (E) Chart 18700, Point Conception to Point Sur (July 2003);
- (F) Chart 18720, Point Dume to Purisima Point (January 2005); and
- (G) Chart 18740, San Diego to Santa Rosa Island (April 2005)."

III. CONCLUSION

For the foregoing reasons, ARB believes that the differences between the ATCM and the APHIS and U.S. Coast Guard regulations do not materially alter the requirements, rights, responsibilities, conditions, prescriptions, or other regulatory element of any CCR provisions. Furthermore, the cost of any such difference is justified by the benefit to human health, public safety, public welfare, or the environment. Finally, updates to the three NOAA nautical charts, made after publication of the Staff Report, are also nonsubstantial in nature.